

REMARKS

Favorable reconsideration of this application is respectfully requested in view of the amendments set forth above and the following remarks.

By virtue of the amendments above, claims 1, 4, 5, 7, 14, 16, 17, 20, and 21 have been amended, and claims 2, 3, and 15 have been canceled without prejudice or disclaimer of the subject matter therein. Support for the amendments may be found in Fig. 4D, which shows an addition of a MAC header and an IP encapsulating header to an encrypted packet, and the original specification at page 7, lines 13, 14 and 28-30. Therefore, claims 1, 4-14 and 16-23 are pending in the present application, of which claims 1, 14, 17, 20 and 21 are independent.

Claims 1, 7-10, 14, and 16-23 were rejected under §103(a) as being unpatentable over U.S. Patent Application Publication No. 2004/0213232 to Regan in view of U.S. Patent No. 6,839,338 to Amara et al. (“Amara”).

Claims 4-6 were rejected under §103(a) as being unpatentable over Regan in view of Amara and in further view of U.S. Patent No. 5,280,476 to Kojima et al. (“Kojima”).

Claim 12 was rejected under §103(a) as being unpatentable over Regan in view of Amara and in further view of U.S. Patent No. 6,700,867 to Classon et al. (“Classon”).

Claim 13 was rejected under §103(a) as being unpatentable over Regan in view of Amara and in further view of U.S. Patent No. 6,947,483 to Engwer (“Engwer”).

Claim Rejection Under 35 U.S.C. §103

The test for determining if a claim is rendered obvious by one or more references for purposes of a rejection under 35 U.S.C. § 103 is set forth in *KSR International Co. v. Teleflex Inc.*, 550 U.S., 82 USPQ2d 1385 (2007):

"Under §103, the scope and content of the prior art are to be determined; differences between the prior art and the claims at issue are to be ascertained; and the level of ordinary skill in the pertinent art resolved. Against this background the obviousness or nonobviousness of the subject matter is determined. Such secondary considerations as commercial success, long felt but unsolved needs, failure of others, etc., might be utilized to give light to the circumstances surrounding the origin of the subject matter sought to be patented." Quoting *Graham v. John Deere Co. of Kansas City*, 383 U.S. 1 (1966).

As set forth in MPEP 2143.03, to ascertain the differences between the prior art and the claims at issue, "[a]ll claim limitations must be considered" because "all words in a claim must be considered in judging the patentability of that claim against the prior art." *In re Wilson*, 424 F.2d 1382, 1385. According to the Examination Guidelines for Determining Obviousness Under 35 U.S.C. 103 in view of *KSR International Co. v. Teleflex Inc.*, Federal Register, Vol. 72, No. 195, 57526, 57529 (October 10, 2007), once the *Graham* factual inquiries are resolved, there must be a determination of whether the claimed invention would have been obvious to one of ordinary skill in the art based on any one of the following proper rationales:

- (A) Combining prior art elements according to known methods to yield predictable results;
- (B) Simple substitution of one known element for another to obtain predictable results;
- (C) Use of known technique to improve similar devices (methods, or products) in the same way;
- (D) Applying a known technique to a known device (method, or product) ready for improvement to yield predictable results;
- (E) "Obvious to try"—choosing from a finite number of identified, predictable solutions, with a reasonable expectation of success;
- (F) Known work in one field of endeavor may prompt variations of it for use in either the same field or a different one based on design incentives or other market forces if the variations would have been predictable to one of ordinary skill in the art;
- (G) Some teaching, suggestion, or motivation in the prior art that would have led one of ordinary skill to modify the prior art reference or to combine prior art reference teachings to arrive at the claimed invention. *KSR International Co. v. Teleflex Inc.*, 550 U.S._, 82 USPQ2d 1385 (2007).

Furthermore, as set forth in *KSR International Co. v. Teleflex Inc.*, quoting from *In re Kahn*, 441 F.3d 977, 988 (CA Fed. 2006), "[R]ejections on obviousness grounds cannot be

sustained by mere conclusory statements; instead, there must be some articulated reasonings with some rational underpinning to support the legal conclusion of obviousness.”

Therefore, if the above-identified criteria and rationales are not met, then the cited reference(s) fails to render obvious the claimed invention and, thus, the claimed invention is distinguishable over the cited reference(s).

Claims 1, 7-10, 14, and 16-23

Claims 1, 7-10, 14, and 16-23 were rejected under §103(a) as being unpatentable over Regan in view of Amara. This rejection is respectfully traversed for at least the following reasons.

Independent claim 1 has been amended to recite a method for secure remote mirroring of network traffic, the method comprising, *inter alia*:

...;

generating and adding a first header and a second header to the encrypted data packet to encapsulate the encrypted data packet, wherein the first header includes an Internet Protocol (IP) destination address corresponding to the mirroring destination address and said identifier, the second header includes a media access control (MAC) destination address, and the encapsulated encrypted packet comprises an IP-encapsulated encrypted packet including the IP destination address; . . .

Regan fails to teach or suggest generating and adding a first header and a second header to an encrypted data packet to encapsulate an encrypted data packet, where the first header includes an Internet Protocol (IP) destination address corresponding to a mirroring destination address and an identifier and the second header includes a media access control

(MAC) destination address. More specifically, Regan discloses that data packets may be mirrored off of a core network to one or more mirroring destinations. Regan at Abstract, lines 1-5. However, as conceded at page 4 of the Office Action, Regan fails to teach generating and adding a header to encapsulate an encrypted data packet as discussed for claim 1.

Amara fails to teach or suggest ways to overcome the above-discussed deficiencies of Regan. The Office Action at pages 4-5 cites Amara's disclosure from column 8, line 66, to column 9, line 15, as showing generating and adding a header to encapsulate an encrypted data packet. In the cited portion of Amara, an IP packet having a destination address is disclosed. However, Amara fails to teach or suggest that the IP packet of Amara has a first header and a second header to encapsulate the IP packet, where the first header includes an Internet Protocol (IP) destination address and the second header includes a media access control (MAC) destination address. Thus, Amara fails to teach or suggest generating and adding a first header and a second header to an encrypted data packet to encapsulate an encrypted data packet, where the first header includes an Internet Protocol (IP) destination address corresponding to a mirroring destination address and an identifier and the second header includes a media access control (MAC) destination address.

Thus, for at least the foregoing reasons, the proposed combination of Regan and Amara fails to teach all of the features of independent claim 1 and its dependent claims and thus cannot anticipate these claims. The Examiner is therefore respectfully requested to withdraw the rejection of claim 1 and claims that depend therefrom and to allow these claims.

Independent claims 14, 17, 20, and 21 each recite features similar to those discussed above for claim 1 as follows. Claims 14 and 17 each recites "encapsulate each of the

encrypted packets by adding, to the encrypted packet, a first header which includes said identifier and an Internet Protocol (IP) destination address and by also adding a second header which includes a media access control (MAC) destination address.” Claim 20 recites “encapsulate each of the encrypted packets by adding, to the encrypted packet, a first header which includes an incrementing identifier and an Internet Protocol (IP) destination address and by also adding a second header which includes a media access control (MAC) address.” Claim 21 recites “generating and adding a first header and a second header to the encrypted data packet to encapsulate the encrypted data packet, wherein the first header includes an Internet Protocol (IP) destination address corresponding to the mirroring destination address and said identifier and the second header includes a media access control (MAC) destination address.” Thus, for at least the same reasons set forth earlier with respect to claim 1, the proposed combination of Regan and Amara fails to teach all of the features of independent claims 14, 17, 20, and 21 and their respective dependent claims and thus cannot anticipate these claims. The Examiner is therefore respectfully requested to withdraw the rejection of claims 14, 17, 20, and 21 and claims that depend therefrom and to allow these claims.

Claims 4-6

Claims 4-6 were rejected under §103(a) as being unpatentable over Regan in view of Amara and in further view of Kojima. This rejection is traversed for at least the following reasons.

Claims 4-6 depend from claim 1. Thus, for at least the same reasons set forth with respect to claim 1, Regan and Amara, either alone or in combination, fail to teach or suggest the above-recited features of claim 1.

Kojima fails to overcome the above-discussed deficiencies of Regan and Amara.

More specifically, the Office Action at page 14 relies on Kojima as showing features related to a MAC header as recited in claims 4-6. However, such features of Kojima and the rest of Kojima's disclosure fail to teach or suggest the above-recited features of claim 1.

Thus, for at least the above-discussed reasons, the proposed combination of Regan, Amara and Kojima fails to teach or suggest the above-discussed features of claims 4-6. It is respectfully submitted that the Office Action *failed* to establish a *prima facie* case of obviousness against claims 4-6. Accordingly, the Examiner is respectfully requested to withdraw the rejection of claims 4-6 and to allow these claims.

Claim 12

Claim 12 was rejected under §103(a) as being unpatentable over Regan in view of Amara and in further view of Classon. This rejection is traversed for at least the following reasons.

Claim 12 depends from claim 1. Thus, for at least the same reasons set forth with respect to claim 1, Regan and Amara, either alone or in combination, fail to teach or suggest the above-recited features of claim 1.

Classon fails to overcome the above-discussed deficiencies of Regan and Amara. More specifically, the Office Action at page 16 relies on Classon as showing features related to a truncation of a data packet as recited in claim 12. However, such features of Classon and the rest of Classon's disclosure fail to teach or suggest the above-recited features of claim 1.

Thus, for at least the above-discussed reasons, the proposed combination of Regan, Amara and Classon fails to teach or suggest the above-discussed features of claim 12. It is

respectfully submitted that the Office Action *failed* to establish a *prima facie* case of obviousness against claim 12. Accordingly, the Examiner is respectfully requested to withdraw the rejection of claim 12 and to allow this claim.

Claim 13

Claim 13 was rejected under §103(a) as being unpatentable over Regan in view of Amara and in further view of Engwer. This rejection is traversed for at least the following reasons.

Claim 13 depends from claim 1. Thus, for at least the same reasons set forth with respect to claim 1, Regan and Amara, either alone or in combination, fail to teach or suggest the above-recited features of claim 1.

Engwer fails to overcome the above-discussed deficiencies of Regan and Amara. More specifically, the Office Action at page 16 relies on Engwer as showing features related to compression of a data packet as recited in claim 13. However, such features of Engwer and the rest of Engwer's disclosure fail to teach or suggest the above-recited features of claim 1.

Thus, for at least the above-discussed reasons, the proposed combination of Regan, Amara and Engwer fails to teach or suggest the above-discussed features of claim 13. It is respectfully submitted that the Office Action *failed* to establish a *prima facie* case of obviousness against claim 13. Accordingly, the Examiner is respectfully requested to withdraw the rejection of claim 13 and to allow this claim.

Conclusion

In light of the foregoing, withdrawal of the rejections of record and allowance of this application are earnestly solicited.

Should the Examiner believe that a telephone conference with the undersigned would assist in resolving any issues pertaining to the allowability of the above-identified application, please contact the undersigned at the telephone number listed below.

Please grant any required extensions of time and charge any fees due in connection with this request to deposit account no. 08-2025.

Respectfully submitted,

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